

BILL ANALYSIS

C.S.S.B. 47
By: Nelson
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, county clerks are required to submit marriage license data to the Bureau of Vital Statistics (bureau). However, the information does not have to be updated in real time and the current online database is only updated through 2004. This leaves county clerks without a mechanism to ensure that a marriage license is a valid document. As a result, individuals are obtaining multiple marriage licenses in the State of Texas and using those licenses for certain fraudulent purposes.

C.S.S.B.47 requires the bureau to create a real-time online database of marriage licenses so that county clerks will have the ability to share information among counties to prevent marriage fraud by ensuring that individuals are not receiving multiple licenses. This bill also requires county clerks to verify that an individual does not already have a marriage license before issuing said license.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 5 (Section 194.003, Health and Safety Code) of this bill.

ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 2, Family Code, by adding Section 2.0075, effective January 1, 2009, as follows:

Sec. 2.0075. STATE INDEX VERIFICATION REQUIRED. (a) Requires the county clerk to verify that neither applicant for a marriage license is listed on the online state index (index) maintained by the Bureau of Vital Statistics (bureau) under Section 194.003 (State Index), Health and Safety Code, as being presently married.

(b) Authorizes an applicant to provide to the clerk a copy of a decree of divorce or annulment or copy of the death certificate of the person to whom the applicant was formerly married as proof that a marriage of the applicant that is listed on the index has been dissolved.

SECTION 2. Amends Sections 2.009(a) and (b) and adds Subsection (e), Family Code, effective January 1, 2009, as follows:

(a) Includes a listing of an applicant as being presently married to a person other than the other applicant and has not provided to the clerk certain proof of dissolution of that marriage, to the list of conditions which prohibit the county clerk for issuing a marriage license to either applicant. Makes conforming changes.

(b) Makes a conforming change.

(e) Prohibits a county clerk from refusing to issue a license if the applicant provides to the clerk an affidavit of the applicant declaring that the applicant's name is listed on the index in error or declaring that the applicant has good reason for failing to provide to the clerk proof that the marriage of the applicant has been dissolved. Prohibits the county clerk from refusing to issue a license on the ground that the applicant is listed on the online state index under Section 194.003, Health and Safety Code, as being presently

married to a person other than the other applicant if the applicant provides to the clerk an affidavit of the applicant declaring that the applicant's name is listed on the index in error or declaring that the applicant's has good reason for failing to provide to the clerk proof under Section 2.0075 (b) that the marriage of the applicant has been dissolved. Requires the county clerk to submit to the bureau of vital statistics, a copy of the affidavit.

SECTION 3. Amends Subchapter E, Chapter 2, Family Code, by adding Section 2.4035, effective January 1, 2009, as follows:

Sec. 2.4035. STATE INDEX VERIFICATION REQUIRED. Requires the county clerk to verify, using the index, that neither party to the declaration of informal marriage is listed as being presently married.

(b) Authorizes a party to provide to the clerk a copy of a decree of divorce or annulment of a copy of a death certificate of the person to whom the applicant was formerly married as proof that a marriage of the party that is listed on the index has been dissolved.

SECTION 4. Amends Section 2.404(b) and adds Subsection (f), Family Code, effective January 1, 2009, as follows:

(b) Makes a conforming change.

(f) Prohibits a clerk from refusing to record a declaration on the ground that the party is presently married to a person if the party provides to the clerk an affidavit declaring that the party's name is listed on the index in error or declaring that the party had good reason for failing to provide proof as required under Section 2.4035(b). Requires the county clerk to submit to the bureau of vital statistics, a copy of the affidavit.

SECTION 5. Amends Section 194.003, Health and Safety Code, by adding Subsections (c), (d) and (e) as follows:

(c) Requires the bureau to make available on its Internet website the indexes of all currently recorded instances of marriage licenses, declarations of informal marriages, divorces, and annulments. Requires the bureau, to the extent practicable using certain fees to enhance the search capabilities of its database of certain information and to ensure that the indexes are accurate, up-to-date, and easily accessible. Requires the bureau to include a notation next to each marriage license application or declaration of information marriage for which an affidavit was submitted.

(d) Requires the executive commissioner of the Health and Human Services Commission (HHSC) to adopt certain rules for the administration of this section.

(e) Requires the executive commissioner of the Health and Human Services Commission, by rule to set a fee on each marriage license applicant with certain restrictions. Requires the executive commissioner to provide notice to the Office of Court Administration (OCA) of the Texas Judicial System regarding the amount of the fee. Requires OCA to notify each county clerk regarding the amount of the fee.

SECTION 6. Amends Section 118.018, Local Government Code, by adding Subsection (d) to require a county clerk, in addition to other fees collected under this section, to collect from a marriage license applicant as established by the executive commissioner of the Health and Human Services Commission under Section 194.003 of the Health and Safety Code to be sent to the bureau for deposit to the credit of the vital statistics fund for updating, developing, and maintaining the state index of marriage license applications and declarations of informal marriage and the state index of reports of divorces or annulments of marriage described by this subsection.

SECTION 7. Amends Section 118.019, Local Government Code, as follows:

C.S.S.B. 47 80(R)

Sec. 118.019. DECLARATION OF INFORMAL MARRIAGE. (a) Creates this subsection from existing text. Provides for Section 2.404 (Recording of Declaration of Informal Marriage), Family Code, rather than Section 1.92, Family Code, to specify regulations regarding the execution of a declaration of informal marriage.

(b) Requires a county clerk, in addition to the fee described by Subsection (a), to collect from parties to a declaration of informal marriage a as established by the executive commissioner of the Health and Human Services Commission under Section 194.003 of the Health and Safety Code to be sent to the bureau for deposit to the credit of the vital statistics fund for updating, developing, and maintaining the state index of marriage license applications and declarations of informal marriage and the state index of reports of divorces or annulments of marriage described by this subsection.

SECTION 8. Amends Section 118.022(a), Local Government Code, to exempt certain fees from those required to be sent to the comptroller of public accounts and deposited in the child abuse and neglect prevention trust fund.

SECTION 9. Makes application of Sections 2.009(a) and (b), and Section 2.404(b), Family Code, as amended by this Act, prospective to January 1, 2009.

SECTION 10. Requires that the executive commissioner of the Health and Human Services Commission to adopt rules for the administration of Section 194.003, Health and Safety Code, as required by this Act, no later than June 1, 2008. Requires the executive commissioner to ensure that the enhancements to the online marriage index are completed and available for access by county clerks not later than January 1, 2009.

SECTION 11. Makes application of certain fees, as added by this Act, prospective.

SECTION 12. This Act takes effect September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

In the introduced version, an applicant may provide the clerk with a certified copy of a decree of divorce or annulment as proof that a marriage of the applicant that is listed on the index has been dissolved. The substitute allows the applicant to also present a death certificate of the person to whom the applicant was formerly married as proof that a marriage of the applicant has been dissolved.

The introduced version does not contain a provision prohibiting a county clerk from refusing to issue a license if the applicant provides a clerk an affidavit of the applicant declaring that the applicant's name is listed on the index in error or declaring that the applicant has good reason for failing to provide to the clerk proof that the marriage of the applicant has been dissolved. Requires the county clerk to submit to the bureau a copy of the affidavit. The substituted version does contain this prohibition.

The introduced version authorizes a party to provide the clerk a certified copy of a decree of divorce or annulment as proof that a marriage of the party that is listed on the index has been dissolved. The substitute allows the applicant to also present a death certificate of the person to whom the applicant was formerly married as proof that a marriage of the applicant has been dissolved.

The substituted version requires the bureau to include a notation next to each marriage license application or declaration of information marriage for which an affidavit was submitted. The substituted version also requires the executive commissioner of the Health and Human Services Commission to set a fee on each marriage license applicant with certain restrictions. Requires

the executive commissioner to provide notice to the Office of Court Administration (OCA) of the Texas Judicial System regarding the amount of the fee. Requires OCA to notify each county clerk regarding the amount of the fee.

In the introduced version, the county clerk will collect a marriage license fee not to exceed \$5. In the substituted version, the fee will be established by the executive commissioner of the Health and Human Services Commission. A fee collected under this subsection will be sent to the bureau of vital statistics of the Department of State Health Services for deposit to the credit of the vital statistics fund to be used for the purpose of updating, developing, and maintaining the state index.

In the introduced version, the county clerk will collect a declaration of informal marriage fee not to exceed \$5. In the substituted version, the fee will be established by the executive commissioner of the Health and Human Services Commission. A fee collected under this subsection will be sent to the bureau of vital statistics of the Department of State Health Services for deposit to the credit of the vital statistics fund to be used for the purpose of updating, developing, and maintaining the state index.